

REMARKS

I. INTRODUCTION

In response to the Office Action dated February 27, 2009, please consider the following remarks.

II. COMMUNICATION

On April 22, 2009, the Applicants' Attorney, Victor G. Cooper contacted the Examiner to discuss the provisional double patenting rejections in the case. A telephonic message was left to explain that terminal disclaimers would be filed in all cases except the provisional rejection based on the '833 application for the reasons described below.

III. DOUBLE PATENTING REJECTIONS

The Final Office Action provisionally rejects claims 1-21 on the ground of non-statutory double patenting as being unpatentable over claims 1-34 of copending Application No. 09/620,772 (now issued as U.S. Patent No. 7,457,414). Since this rejection is based on an issued patent, the Applicants hereby submit a terminal disclaimer, thus mooting this rejection.

The Final Office Action provisionally rejects claims 1-21 on the ground of non-statutory double patenting as being unpatentable over claims 1-31 of copending Application No. 10/758,865. A terminal disclaimer for this application was filed on March 4, 2008.

The Final Office Action provisionally rejects claims 1-21 on the ground of non-statutory double patenting as being unpatentable over claims 1-22 of copending Application No. 10/758,818. Since this rejection is based on an application in which issuance is imminent, the Applicants hereby submit a terminal disclaimer, thus mooting this rejection.

The Final Office Action provisionally rejects claims 1-21 on the ground of non-statutory double patenting as unpatentable over claims 1, 4-6, 8-23, 26-28 and 30-55 of copending Application No. 09/620,833. Since this provisional rejection is the only basis for rejection in this case and since issuance of the subject application ('833) is not imminent, the Applicants respectfully traverse this rejection.

MPEP § 804 provides that:

The “provisional” double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that “provisional” double patenting rejection is the only rejection remaining in at least one of the Applications.” MPEP § 804 IB


Since the Applicants have presented terminal disclaimers to obviate all outstanding rejections, this provisional rejection in view of the ‘833 copending application is the only rejection remaining in the present application. Accordingly, the rejection should be withdrawn and this application allowed. Should the Examiner have any questions in this regard, the Applicants ask that the undersigned attorney be contacted directly by telephone.

IV. CONCLUSION

In view of the above, it is submitted that this application is now in good order for allowance and such allowance is respectfully solicited. Should the Examiner believe minor matters remain that can be resolved in a telephone interview, the Examiner is urged to call Applicants’ undersigned attorney. The Director is authorized to charge any fees required with this response to Applicant’s Deposit Account 50-0383.

Respectfully submitted,

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